are not analogous.[12] Equally certain it seems that, however desirable may be the substitution of allodial ownership for dependent tenure in England, it is to be realized by legislation, not to be adopted for a writer's purposes.[13] Until such legislative change, it is unwarrantable to reason from the sovereign's right to personalty as *bona vacantia* to realty in general. For in England the sovereign never took realty by prerogative except in the case of alienage and when entitled to derelict land as universal occupant.[14] In the United States, however, as many states have abolished tenure by legislation, they take realty of an intestate without heirs as *bona vacantia*, in the absence of escheat statutes.[15]

DE FACTO OFFICERS WITHOUT A DE JURE OFFICE. — When the charter of a long existing municipal corporation is declared unconstitutional so that the corporation can no longer be said to exist with any color of right as a *de facto* body, are the past acts of its officers valid as to third persons? Clearly, were all their acts void, there would be endless confusion. A recent article considers the practical importance and the authority on this question, and argues that such acts should be valid as to third persons — a contention which opposes the view of text-book writers.[1] *De Facto Office*, by K. Richard Wallach, 22 Pol. Sci. Quar. 460 (September, 1907).

There arises here more than the simple question, whether a man improperly chosen to a public office legally existing can ever do acts which are binding as to third parties, for there is here no office *de jure*. In considering the cases covering the situation, Mr. Wallach indicates that although there is a strong current in the law that the acts of men holding such offices are always void, yet that the exact point decided in all but one of the cases does not involve such a conclusion. He considers that the cases fall into two classes: those where *de facto* officers are wrongly holding an office, the legal existence of which is unquestioned, so that any dicta that an office *de jure* is essential are irrelevant; and those where, although no office *de jure* exists, yet it appears that the man acting could not be held a *de facto* officer in any case,[2] not having that color of authority which is necessary even in the case of a *de jure* office to make valid the acts of one holding office irregularly. It is not clear that in this second class the court's pronouncement is entirely *obiter*, for the fact that they take the trouble to find that no *de jure* office exists shows that their decision depends as well on that fact as on the lack of color of authority in the would-be officer's title — an authority which in several of Mr. Wallach's cases was seemingly presumed by the court,[3] although perhaps erroneously according to a strict analysis of the facts. It is possible, however, that some of these cases are distinguishable on a further ground. As Mr. Wallach points out, the principal reason of public policy for holding the acts of *de facto* officers valid as to third persons is the necessity of protecting the public in dealing with their government. It is submitted that in a criminal case the steady policy of the law to give a criminal every chance might very well override the ordinary rule of public policy, and that such a defendant should be allowed to set up the illegal existence of the office of those trying him,[4] though he could not question the authority of a *de facto* officer in a *de jure* office.[5] The difference between the

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[12] 2 Pollock & Maitland, Hist. Eng. Law, 22, 23.

[13] See 4 L. Quar. Rev. 318; 42 L. J. 440.

[14] See *Ex parte* Lord Gwydir, 4 Madd. 281; 4 L. Quar. Rev. 318.

[15] See Gray, Rule Perp., 2 ed., 170 n.

[1] Dillon, Mun. Corp., 4 ed., § 276; Mechem, Public Offices and Officers, § 324.

[2] Norton *v.* Shelby County, 118 U. S. 425; criticized in 11 HARV. L. REV. 266.

[3] *Ex parte* Babe Snyder, 64 Mo. 59; Decorah *v.* Bullis, 25 Ia. 12.

[4] *Ex parte* Babe Snyder, *supra*; State *v.* O'Brian, 68 Mo. 153; Petition of Hinkle, 31 Kan. 712; Matter of Quinn, 152 N. Y. 89. See also *Ex parte* Giambonini, 117 Cal. 573.

[5] State *v.* Carroll, 38 Conn. 449; *In re* Ah Lee, 5 Fed. 899; *Ex parte* Strang, 21 Oh. St. 610.

two cases, although, as Mr. Wallach would contend, immaterial in general, might sway the balance in a criminal case. It is therefore significant that four of the nine cases cited by Mr. Wallach in his second class are criminal.

As regards the cases in accord with his view, he collects many strongly in point to show that the fact that no office was legally in existence does not conclude the question as to the validity of its incumbent's acts, — as when taxes were laid after a city charter had run out,[6] or when damages were given by a lower court, illegally existing, from which an appeal had been taken,[7] etc. To this list might be added a Massachusetts case, where the legislature created an office to begin in future and one elected to it acted before that day.[8] On strict analysis of the facts reported, only one case[9] is opposed to Mr. Wallach's view, and he shows the inequitable result of the court's decision, that the license of the defendant granted by commissioners acting with color of authority in an illegal office, was no answer to an indictment for illegal liquor selling.

In collecting the cases Mr. Wallach refers to a situation analogous in fact to that under discussion, "where there is no constitutional office in existence, but where the officer is protected both from collateral and direct attack on the ground that his office is part of a municipal organization which is in existence unattacked by the state." The cases on this point go very far in applying the general rule of public policy that admittedly validates the acts of *de facto* officers in a *de jure* office. The conclusion that the rule should also be extended to cover the analogous case where there is color of authority in an existing office, though no office *de jure*, seems justified. Therefore the question under discussion may be decided in the way that will protect the public as to the outcome of their past dealings with officers of government, acting with such color of authority as justified these dealings, not only on principle, but also in accordance with the weight of authority.

ADVERSE POSSESSION, TITLE BY. *Charles Stuart.* Maintaining that restrictive covenants are binding on one who gets title by adverse possession even though not binding on a disseisor. 19 Jurid. Rev. 66. See 21 HARV. L. REV. 139.

BANKRUPTCY (SCOTLAND) BILL, 1907, THE. I. *W. W.* Summarizing the bill. 23 Scot. L. Rev. 248.

BANKRUPTCY, CORPORATIONS SUBJECT TO. *R. Jackson Cram.* Enumerating the classes of corporations that come within the terms of the National Act. 19 Green Bag 529.

BILLS OF LADING, THE LAKE SITUATION AND. *Anon.* Contending that bills "care consignee" are not good security. 24 Bank. L. J. 697.

COMMON EMPLOYMENT, THE DOCTRINE OF, IN ENGLAND AND CANADA. *J. P. McGregor.* A study in comparative legislation and jurisprudence. 6 Can. L. Rev. 24, 61, 110, 158, 324.

COMMON LAW, THE INFLUENCE OF NATIONAL CHARACTER AND HISTORICAL ENVIRONMENT ON THE DEVELOPMENT OF THE. *James Bryce.* 19 Green Bag 569.

COMPENSATION FOR MINERALS UNDER A RAILWAY. *Anon.* Reviewing the cases on a railway's right of support in adjacent minerals. 51 Sol. J. 684.

COMPETITION, LEGISLATIVE AND JUDICIAL DEVELOPMENT OF, CONTRASTED. *Merritt Starr.* Adversely criticizing the legislation. 40 Chi. Leg. N. 7, 16.

COMPETITIVE BIDDING IN LETTING MUNICIPAL CONTRACTS FOR STREET PAVING WHEN PATENTED OR MONOPOLIZED ARTICLES OR MATERIALS ARE INVOLVED, AS A PHASE OF THE CASE OF THE WILL OF THE LAW *v.* THE WILL OF THE JUDGE. *Eugene McQuillin.* 65 Cent. L. J. 198.

CONSTITUTION, THE NATION AND THE. *Charles F. Amidon.* Contending that the interpretation of the Constitution should change with changing conditions. 19 Green Bag 594.

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[6] Adams *v.* Lindell, 5 Mo. App. 197; aff. 72 Mo. 198.

[7] Burt *v.* Winona, etc., Ry. Co., 31 Minn. 472; *contra*, Norwood *v.* Louisville, etc., R. Co, 42 So. 683 (Ala.); criticized in 20 HARV. L. REV. 580.

[8] Fowler *v.* Bebee, 9 Mass. 231. Add also Riley *v.* Garfield, 58 Kan. 299.

[9] Flaucher *v.* Camden, 56 N. J. L. 244.

CORPORATIONS AND THE COMMERCE CLAUSE. *Smith W. Bennett.* Discussing the power of Congress to create corporations to engage in interstate commerce and to deny that power to the states. 52 Oh. L. Bul. 379.

CROSS-EXAMINATION (Continued). *Anon.* Stating clearly the principles in force in the English courts. 71 J. P. 385, 397, 409.

DAMAGES, ACCIDENT INSURANCE AS AFFECTING THE MEASURE OF. *J. Campbell Lorimer.* Contending that the rule that accident insurance should not be deducted from damages ought to apply to the case of injuries causing death. 19 Jurid. Rev. 58.

DAMAGES, ALLOWANCE OF SPECIAL, IN ACTIONS FOR WRONGFUL DISMISSAL OF SERVANTS. *C. B. Labatt.* Collecting the authorities on the allowance of consequential and incidental damages. 43 Can. L. J. 593.

DEDICATION OF LAND TO PUBLIC USE BY LESSEES FOR YEARS. *Anon.* 51 Sol. J. 509. See *supra.*

DE FACTO OFFICE. *K. Richard Wallach.* 22 Pol. Sci. Quar. 460. See *supra.*

DIPLOMATIC PROTECTION OF CITIZENS ABROAD (Continued). *M. Gaston de Leval.* Suggesting a system to ensure protection. 42 L. J. 607.

DIVORCE DECREES, FOREIGN, IN NEW YORK. *Raymond D. Thurber.* Attempting to reconcile Atherton *v.* Atherton with Haddock *v.* Haddock. 10 Bench and Bar 82. See 19 HARV. L. REV. 586.

DYING DECLARATIONS. *Wilbur Larremore.* Contending that under modern conditions this exception to the hearsay rule should be as restricted as possible. 41 Am. L. Rev. 660.

EVIDENCE, WHEN IS A COMPLAINT BY THE PERSON AGAINST WHOM AN OFFENCE IS ALLEGED TO HAVE BEEN COMMITTED ADMISSIBLE IN? *William C. Maude.* 71 J. P. 411.

EXECUTIVE CONTROL OF THE LEGISLATURE, THE (Concluded). *James D. Barnett.* Collecting the cases on the executive's veto power. 41 Am. L. Rev. 384.

FELLOW SERVANTS' LAW, PROPOSED CHANGES IN THE. *George Rice.* Contending that the fellow-servant doctrine should be abolished in the case of railroads. 52 Oh. L. Bul. 298.

ILLEGALITY OF THE ACTION OF THE CIRCUIT COURT OF THE UNITED STATES IN ENJOINING THE VIRGINIA STATE CORPORATION COMMISSION FROM ENFORCING A TWO CENT RATE AFFECTING THE INTRA-STATE BUSINESS OF RAILROADS. *E. Hilton Jackson.* Arguing that the proceedings of the commission were judicial, and therefore should not have been restrained. 13 Va. L. Reg. 417.

INJUNCTIONS AGAINST STRIKES, BOYCOTTS, AND SIMILAR UNLAWFUL ACTS. *F. C. Donnell.* General discussion. 65 Cent. L. J. 273.

INTERNATIONAL LAW, THE NEED OF POPULAR UNDERSTANDING OF. *Elihu Root.* 1 Am. J. of Int. L. 1.

LEGACIES, APPROPRIATION OF TRUST FUNDS TO. *William C. Smith.* Discussing the right of an executor to appropriate part of testator's estate to pay one legatee before the others. 19 Jurid. Rev. 19.

MORTGAGES AND FIXTURES. *Anon.* Collecting the recent English cases on the rights of a conditional vendor. 51 Sol. J. 567. See 20 HARV. L. REV. 565.

MUELLER LAW DECISIONS, THE. *Anon.* Adversely criticizing the Illinois decision that the issue of municipal bonds secured by a railway franchise increased the city's debt. 34 Nat. Corp. Rep. 325. See 21 HARV. L. REV. 149.

NEGOTIABLE INSTRUMENTS LAW, EFFECT OF, ON LIABILITY OF THE SURETY. *T. A. S.* Adversely criticizing a holding that under the act an accommodation maker signing as surety is not released by an extension to the principal. 11 L. N. (Northport) 105.

NEWEST NEOLOGISM OF THE SUPREME COURT, THE. *William Trickett.* Maintaining that the Supreme Court was wrong in saying in Kansas *v.* Colorado that the federal judiciary has more than enumerated powers. 41 Am. L. Rev. 729. See 21 HARV. L. REV. 47.

NOTICE OF DISHONOR BY MAIL TO INDORSER IN SAME PLACE WHEN DAY FOLLOWING DISHONOR IS SATURDAY. *Anon.* Contending that notice on a holiday is valid under the Negotiable Instruments Law. 24 Bank. L. J. 691.

PART PAYMENT, THE EFFECT OF, AS AGAINST DEVISEES OF REAL ESTATE. I. *Anon.* Maintaining that part payment of a debt should, as against devisees of the debtor's realty, waive the statute of limitations. 51 Sol. J. 407. See 19 HARV. L. REV. 57; 20 *ibid.* 332.

PATENTS, SHOULD "PAPER PATENTS" BE ACCORDED FAVORABLE CONSIDERATION? *Walker Banning.* Reviewing the authorities on the point. 40 Chi. Leg. N. 22. See 20 HARV. L. REV. 638.

PERPETUITIES, THE LEGAL VALIDITY, AS CONTRACTS, OF OPTIONS TO PURCHASE NOT LIMITED TO THE PERIOD ALLOWED BY THE RULE AGAINST. *T. Cyprian Williams.* 51 Sol. J. 648, 669. See 20 HARV. L. REV. 240.

POPULAR GOVERNMENT, GROWTH OF AMERICAN THEORIES OF. *Albert Bushnell Hart.* Tracing the development through various stages to the present supremacy of the decisions of the courts. 1 Am. Pol. Sci. Rev. 531.

PRESIDENT'S ANNUAL ADDRESS. *Alton B. Parker.* Discussing the present trend of legislation to correct the abuses of corporate power and entering a plea for upholding the Constitution. 19 Green Bag 581.

PUBLICUM BONUM PRIVATE EST PREFERENDUM. *Franklin A. Beecher.* Contending that under modern conditions the police power should be given extended application. 65 Cent. L. J. 79, 100, 119.

QUI PRIOR EST TEMPORE POTIOR EST JURE. *Anon.* Commenting on a recent English case on the relation between the *cestui* and an equitable mortgagee. 29 L. Stud. J. 200. See 21 HARV. L. REV. 53.

SOCIOLOGICAL JURISPRUDENCE, THE NEED OF A. *Roscoe Pound.* Urging a scientific treatment of the present sociological tendencies. 19 Green Bag 607.

SOVEREIGNTY IN A STATE, NOTES ON. Second Paper. *Robert Lansing.* Discussing the relation of state sovereignty to civil and state liberty, to constitutions, and to law. 1 Am. J. of Int. L. 297.

SUPREME COURT, THE POWER OF THE, TO ENFORCE ITS DECREES. *George C. Lay.* Historical survey of the cases in which a state has refused to obey the Supreme Court decrees, and discussion of the possibility of enforcing such decrees today. 41 Am. L. Rev. 515.

TRADE UNIONS AND TRUSTS, ATTITUDE OF THE STATE TOWARDS. *Henry R. Seager.* Contending for uniformity in treatment. 22 Pol. Sci. Quar. 385.

TREATY-MAKING POWER, THE. *L. Atherley-Jones.* Contending that in England today the power to make treaties of alliance should not be so exclusively in the Cabinet. 42 L. J. 511.

TREATY-MAKING POWER, THE EXTENT AND LIMITATIONS OF THE, UNDER THE CONSTITUTION. *Chandler P. Anderson.* An exhaustive historical review of the authorities. 1 Am. J. of Int. L. 636.

TRIAL, THE EVOLUTION OF THE RIGHT OF. *Horace H. Lurton.* 52 Oh. L. Bul. 442.

VERDICTS, THE POWER OF APPELLATE COURTS TO CUT DOWN EXCESSIVE. *Robert L. McWilliams.* Contending that the power should exist only when passion or prejudice is shown. 64 Cent. L. J. 267.

II. BOOK REVIEWS.

THE LAW OF TORTS. By Melville Madison Bigelow. Eighth Edition. Boston: Little, Brown, and Company. 1907. pp. xxxv, 502. 8vo.

When Dr. Bishop, in 1892, published his "New Commentaries on the Criminal Law" the work was described on the title page as:

"Eighth Edition"

"Being a New Work Based on Former Editions."

Professor Bigelow might well have followed this example. The so-called Eighth Edition of Bigelow on the Law of Torts is, in large part, a new work. The arrangement of topics is entirely changed; much matter has been added; and, most important of all, some questions of great consequence are viewed from a new standpoint. A large part of the first chapter on "Theory and Doctrine of Tort" has been rewritten. The remainder of the work is divided into two parts, the division being "based upon the special state of mind which caused the conduct in question." Part I (Culpable Mind) comprises cases where the defendant's liability "turns upon his special mental attitude (apart from volition in what was done or omitted)." Part II (Inculpable Mind) comprises cases where the defendant's liability "does not necessarily turn upon his special mental attitude (apart from volition in what was done or omitted)." The most important new matter is in Chapter VI, "Procuring Refusal to Contract," — a chapter wholly rewritten — and in Chapter VII, "Procuring Breach of Contract." The germ of this new matter is to be found in Professor Bigelow's very able contributions to the collection of essays recently published under